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RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641  
December 13, 2013

The Honorable Janet McCabe  
Acting Assistant Administrator  
Office of Air and Radiation  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Acting Administrator McCabe:

Thank you for appearing before the Subcommittee on Energy and Power on Thursday, November 14, 2013, to testify at the hearing entitled "EPA's Proposed GHG Standards for New Power Plants and H.R. \_\_, Whitfield-Manchin Legislation."

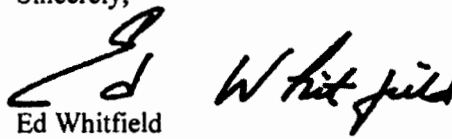
Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests by the close of business on Friday, January 10, 2014. Your responses should be e-mailed to the Legislative Clerk in Word format at [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov) and mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

  
Ed Whitfield  
Chairman  
Subcommittee on Energy and Power

cc: The Honorable Bobby L. Rush, Ranking Member,  
Subcommittee on Energy and Power

Attachments

### **Attachment 1—Member Requests for the Record**

*During the hearing, Members asked you to provide information for the record and you indicated that you would provide that information. For your convenience, descriptions of the requested information based on the relevant excerpts from the hearing transcript are provided below.*

#### **The Honorable Robert E. Latta**

1. During the hearing, you agreed to provide the committee with a list of facilities that were using scrubbers when the standards developed to require the use of scrubbers was implemented and made final in the late 1970s. Please provide a list of these facilities.

#### **The Honorable David B. McKinley**

1. During the hearing, you agreed to respond in writing regarding how it is that you are testifying that carbon capture and storage (CCS) technologies for coal plants are available now, when back in November 2011, EPA Administrator Lisa Jackson was quoted as stating that CCS technology was a “maybe a decade or more” away from being commercially available. The Department of Energy similarly put out their own report saying the technology wouldn’t be commercially viable until 2020. Please explain why you disagree with the projections of Administrator Jackson and the Department of Energy.

#### **The Honorable John D. Dingell**

1. During the hearing, you indicated that you have reached out to stakeholders, including industry stakeholders, about components of greenhouse gas rules for new and existing power plants. Please submit for the record all of the actions you and your office have taken with regard to the development of these rules.

## **Attachment 2—Additional Questions for the Record**

### **The Honorable Ed Whitfield**

1. On June 25, 2013, President Obama issued a Presidential Memorandum directing EPA to re-propose greenhouse gas standards for new power plants no later than September 20, 2013, and to issue a final rule “in a timely fashion” after considering public comments.
  - a. What is EPA’s current schedule for issuing a final rule?
2. The Presidential Memorandum referred to above also directed EPA to propose standards, regulations or guidelines, as appropriate, for modified, reconstructed and existing power plants by June 1, 2014 and finalize them by June 1, 2015.
  - a. Is this EPA’s current schedule for the issuance of standards, regulations or guidelines for modified, reconstructed and existing plants?
3. The Presidential Memorandum referred to above also directed that EPA include in its guidelines addressing existing power plants a requirement that States submit to EPA implementation plans no later than June 30, 2016.
  - a. What does EPA expect the agency’s timeline will be for reviewing implementation plans submitted by States?
4. Under the language of section 111(d) of the Clean Air Act, EPA establishes a procedure under which States submit to the EPA Administrator a plan that contains “standards of performance” for existing stationary sources.
  - a. Does EPA agree that it is the role of States, not EPA, to establish standards of performance for existing stationary sources under section 111(d)?
  - b. Does EPA agree that States, not EPA, would have the primary role in setting any standards of performance for individual electric utility generating units under section 111(d)?
  - c. Does EPA agree that any standards of performance established for existing electric generating units under section 111(d) should be achievable by individual existing electric utility generating units?
5. You testified that for EPA’s planned greenhouse gas regulations for existing power plants, “EPA will set the target, but then the states will have flexibility to meet that in whatever way makes sense to them. So it does not need to be a unit by unit regulation, or expectation.”
  - a. What do you mean when you refer to “the target” to be set by EPA? Please explain.
6. Prior to Administrator McCarthy’s signing proposing greenhouse gas standards for new electric utility generating units on September 20, 2013, was EPA aware of the provisions of the Energy Policy Act codified at 42 U.S.C. 15962(i) that state: “No technology, or level of emission reduction, solely by reason of the use of technology, or the achievement of the emission reduction, by 1 or more facilities receiving assistance under this Act, shall be considered to be . . . adequately demonstrated for purposes of [section 111 of the Clean Air Act]. . .”?
  - a. Given the proposal makes specific reference to technologies receiving assistance under the Energy Policy Act of 2005, why were these provisions not specifically addressed in the proposal?

7. Prior to Administrator McCarthy's signing proposing greenhouse gas standards for new electric utility generating units on September 20, 2013, was EPA aware of the provisions of the Energy Policy Act codified at 26 U.S.C. 48A(g) that state: "No use of technology (or level of emission reduction solely by reason of the use of the technology), and no achievement of any emission reduction by the demonstration of any technology or performance level, by or at one or more facilities with respect to which a credit is allowed under this section, shall be considered to indicate that the technology or performance level is . . . adequately demonstrated for purposes of section 111 of the Clean Air Act . . ."?
  - a. Given the proposal makes specific reference to technologies receiving tax credits under the Energy Policy Act of 2005, why were these provisions not specifically addressed in the proposal?
8. To what extent was the U.S. Department of Justice consulted by EPA regarding the proposed standards for new power plants announced on Sept. 20, 2013?
9. To what extent was the U.S. Department of Energy (DOE) consulted by EPA regarding the proposed standards for new power plants announced on Sept. 20, 2013?
  - a. In your response, please identify which DOE office(s) and/or laboratories EPA consulted regarding the proposed rule.
  - b. If your response, please identify when EPA consulted with these DOE offices and/or laboratories regarding the proposed rule.
10. Prior to Administrator McCarthy's signing proposing greenhouse gas standards for new electric utility generating units on September 20, 2013, did DOE officials or staff raise concerns regarding EPA's proposed requirement of carbon capture and storage (CCS) technologies for new coal-fired power plants?
  - a. Did DOE officials or staff raise concerns that CCS technologies for new coal-fired power plants are not adequately demonstrated?
  - b. Did DOE officials or staff raise concerns that CCS technologies for new coal-fired power plants are not currently ready for widespread commercial deployment?
  - c. Did DOE officials or staff raise concerns that the costs of CCS technologies that would be needed for new coal-fired power plants to comply with the rule are prohibitively expensive?
  - d. Did DOE officials or staff raise concerns about the commercial feasibility of the proposed standards for new coal-fired power plants?

**The Honorable Joe Barton**

1. What is the average cost of construction and operation of a coal-fired power plant that would comply with current EPA regulations?
  - a. What percentage of the total cost is directed toward emissions control?
  - b. What studies or analyses does EPA rely on for these estimates?

2. What is the average cost of construction and operation of a coal-fired power plant that would comply with the recently proposed carbon dioxide emissions standards (not factoring revenue from sale of CO<sub>2</sub>)?
  - a. What percentage of the total cost is directed toward emissions control?
  - b. What percentage of the cost of emission control is directed toward injection and storage of CO<sub>2</sub>?
  - c. What studies or analyses does EPA rely on for these estimates?
3. What is the status of EPA's proposal to exclude geologically sequestered CO<sub>2</sub> from regulation under the Resource Conservation and Recovery Act's hazardous waste program?
  - a. Given the great deal of legal and regulatory uncertainty surrounding geologic storage and liability protection, please describe how EPA accounted for these costs.

BARBARA BOXER, CALIFORNIA, CHAIRMAN

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## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR  
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

December 20, 2013

Sarah W. Dunham  
Director, Office of Atmospheric Programs  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

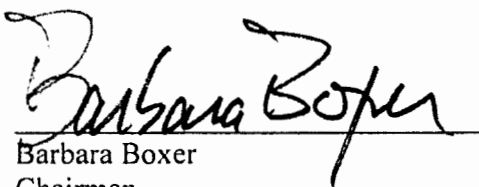
Dear Director Dunham:

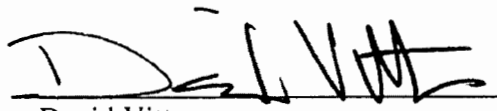
Thank you for appearing before the Committee on Environment and Public Works on November 5, 2013, at the hearing entitled, "Fugitive Methane Emissions from Oil and Gas Operations." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

Enclosed are questions for you that have been submitted by Senator Vitter for the hearing record. Please submit your answers to these questions by COB January 3, 2014, to the attention of Mara Stark-Alcalá, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to [Mara\\_Stark-Alcala@epw.senate.gov](mailto:Mara_Stark-Alcala@epw.senate.gov). To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Joe Mendelson of the Majority Staff at (202) 224-8832, or Dimitri Karakitsos of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,

  
Barbara Boxer  
Chairman

  
David Vitter  
Ranking Member

**Environment and Public Works Committee Hearing  
November 5, 2013  
Follow-Up Questions for Written Submission**

**Questions for Dunham**

Questions from:

Senator David Vitter

1. The recent EPA regulations on the oil and gas sector were a result of a lawsuit filed by environmentalists alleging that EPA missed statutory deadlines for reviewing and updating the previous NSPS and NESHAP standards for the oil and gas sector, is that correct?
  - a. Because this lawsuit was centered around updating existing emissions standards, EPA did not affirmatively find it appropriate to revise the oil and gas NSPS to directly regulate methane emissions?
2. Does the Agency have any guidance or cut off as to what point a "co-benefit" actually no longer a "co-benefit?" For example, the NSPS rule for oil and gas finalized by EPA is largely justified by the reduction of methane, a "co-benefit." These methane reductions are over 90 times greater than the reductions of hazardous air pollutants the rule primarily seeks to regulate. At what point in a rule like this does the "co-benefit" actually become the subject of the regulation? If a "co-benefit" results in 10 times the emissions reductions than what a rule is meant to address, is it still a "co-benefit"? What about 50 times?
  - a. Methane reduction is clearly a large "co-benefit" of the newly updated air rules for the oil and gas industry. Should EPA move to further regulate air emissions from the oil and gas industry – particularly methane specific regulations – would the Agency count reductions in methane emissions from the current rules as benefits for future new rules?
  - b. Can EPA commit to that any future air rules related to the oil and gas industry, for example one specifically regulating methane, will not double count the benefits already used by the Agency in other rules to justify costs or inflate benefits that are already in place?
3. EPA received a notice of intent to sue from seven northeastern – largely non-oil and gas producing – States Attorney Generals to force the agency to create additional regulations on the oil and gas industry in order to directly regulate methane. What are EPA's plans in regards to additional rulemakings on methane or other potential air emissions related to the oil and gas industry? Are there any efforts underway now?
  - a. Given the fact that EPA's air rules on the oil and gas industry which the Agency contends will have significant methane emissions reductions have not been fully implemented yet, can the Agency commit to not moving forward with new regulations until a recent NSPS and NESHAP are fully implemented and EPA has a better idea of the state of emissions at that time?
  - b. The UT-EDF study used real world data to clearly show that EPA's methane emissions estimates from hydraulically fractured wells were grossly overinflated. Will EPA take this empirical data into consideration prior to crafting any potential new emissions regulations with regard to hydraulically fractured wells?

- c. Can you commit that if EPA moves further regulate air emissions from the oil and gas industry the Agency will not rely on their outdated data but rather use actual emissions that among other things have shown significantly less real emissions from hydraulic fracturing?
- 4. What is the status of the Comprehensive Interagency Methane Strategy announced by the President in June? Who is involved, and can you tell me when the strategy will be released?
  - a. Is there any public or stakeholder involvement in this strategy? If so please describe.
  - b. What is EPA's role?
- 5. In the President's Climate Action Plan when addressing the issue of reducing methane emissions the plan states "when it comes to the oil and gas sector, investments to build and upgrade gas pipelines will not only put more Americans to work, but also reduce emission and enhance economic productivity." Does EPA have a roll in the permitting of natural gas infrastructure? Does EPA share the President's goal of expeditiously building more natural gas pipelines and infrastructure?



# Congress of the United States

## House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371  
[www.science.house.gov](http://www.science.house.gov)

December 17, 2013

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator McCarthy:

On behalf of the Committee on Science, Space, and Technology, I want to express my appreciation for your participation in the hearing entitled "Strengthening Transparency and Accountability within the Environmental Protection Agency" on Thursday, November 14, 2013.

You have received a verbatim electronic transcript of the hearing for your review. The Committee's rule pertaining to the printing of transcripts is as follows:

*The transcripts of those hearings conducted by the Committee and Subcommittees shall be published as a substantially verbatim account of remarks actually made during the proceedings, subject only to technical, grammatical, and typographical corrections authorized by the person making the remarks involved.*

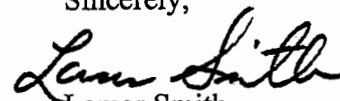
Transcript edits, if any, should be submitted no later than January 2, 2014. If no edits are received by the above date, we will presume that you have no suggested edits to the transcript.

I am also enclosing questions submitted for the record by Members of the Committee. These are questions that the Members were unable to pursue during the time allotted at the hearing, but felt were important to address as part of the official record. **All of the enclosed questions must be responded to no later than January 2, 2014.**

All transcript edits and responses to the enclosed questions should be submitted to us and directed to the attention of Taylor Jordan at [Taylor.Jordan@mail.house.gov](mailto:Taylor.Jordan@mail.house.gov). If you have any further questions or concerns, please contact Mr. Jordan at 202.225.5967.

Thank you again for your testimony.

Sincerely,

  
Lamar Smith  
Chairman

Enclosure: Member Questions and Transcript

**QUESTIONS FOR THE RECORD**  
**The Honorable Lamar Smith (R-TX)**  
**U.S. House Committee on Science, Space, and Technology**

*Strengthening Transparency and Accountability within the Environmental Protection Agency*

Thursday November 14, 2013

**Hydraulic Fracturing Study Questions**

1. EPA's Hydraulic Fracturing Study is concerning because EPA is searching for what is *possible* without paying attention to what is *probable*. For example, the primary goals of the study are to answer questions such as "What are the *possible impacts* of hydraulic fracturing fluid surface spills on or near well pads on drinking water resources?"

It appears EPA's independent science advisors share this concern. For example, one Science3 Advisory Board (SAB) expert commented that "There is no quantitative risk assessment included in EPA's research effort. Thus, the reader has no sense of how risky any operation may be in ultimately impacting drinking water. This is also a significant limitation of the work."

Is the mere *possibility* of an event occurring sufficient to justify regulatory action?

2. The Director of EPA's Office of Science Policy, Dr. Hauchman, stated in May of 2012 that the Agency is implementing "a pretty comprehensive look at all the statutes to determine where "holes" may allow for additional federal oversight."

Is this study part of that comprehensive look? What statutes were looked at as part of this effort? What regulatory "holes" has EPA identified?

3. Given that there have been no proven instances of groundwater contamination, and that greenhouse gas emissions have actually declined thanks to natural gas, what problems are you seeking to solve?
4. What has the Agency done to prevent repeating mistakes made in Parker County, Pavillion, and Dimock regarding fracking? Please include specific policy and protocol changes and actions taken.
5. Has EPA has rescinded the draft Pavilion report and if the draft report has been removed from the hydraulic fracturing drinking water study and scientific advisory board scope?
6. In addition to the retrospective and prospective case studies, it is our understanding that there are 18 additional research projects that EPA had undertaken to help answer the secondary research questions of the study.

- How is the EPA conveying the information from these projects to the public?

- Will details be posted on the study website?
  - What is the plan for peer review of the completed projects?
  - What is the role of the SAB Hydraulic Fracturing Research Advisory Panel with respect to these projects and their final reports?
  - What is the role of the SAB Hydraulic Fracturing ad hoc panel?
  - What is the ad hoc panel's review schedule for the remainder of the study?
7. Is EPA planning to release the raw data from the five Retrospective case study sites to the public via the study website? If so, when will that be available and will the needed context be included when released?
  8. Have states been forthcoming with data under the current Request for Information on the September 2012 study? If not, how have you reached out to these states, particularly those states where a retrospective case study is located?
  9. Has the EPA done any testing in real time for sites that are currently being developed? If not, does the agency plan to do testing in real time at any sites?
  10. What has been your work with DOE and USGS to date on the study?
  11. How are you accounting for fracturing technology innovations as part of the study?
  12. Do you believe hydraulic fracturing can be performed in a safe and responsible manner?
  13. Could you tell us what plans the EPA has for addressing methane – particularly in regards to midstream and upstream systems?

#### **Ozone Questions**

14. If EPA sets a lower NAAQS of 60 to 70 parts per billion for ozone, do you believe there will be parts of the country that cannot meet the new standard due to background concentrations of ozone? If so, what would be the economic and regulatory consequences for a state that cannot meet the new standard?
15. Is it fair for the EPA to include Mexican and Canadian emissions in its background estimates when the states will be forced to control for international ozone emissions?

### **General Air Pollution/NAAQS**

16. Considering the limits of science and technology, what is EPA's strategy for working within the framework established by Congress to effectuate the NAAQS?
17. Because of many factors, such as regulatory uncertainty, the funding for and construction of new long-term, base load power is dwindling. How do you balance new regulations that may benefit human health and the environment via decreased emissions against increased energy costs and the possibility of increased blackouts – both of which have a negative impact on human health?
18. What is your vision to address international transport and what is your plan for equipping states to address these issues?
19. Do you believe EPA has legal authority to require changes from other nations in order to address international transport?
20. What is EPA's plan to address the imbalance created via the adoption of standards and requirements without the tools necessary to demonstrate compliance?
21. Is it possible to propose and adopt a new standard and the implementation rule and/or guidance at the same time? If so, can you commit to adopting the new standard and the implementation rule and/or guidance at the same time? Why or why not?
22. Does EPA have any plans for addressing methane – particularly in regards to midstream and upstream oil and gas production?

### **Environmental Health Claims**

23. EPA estimates that reductions in particulate matter (PM) will prevent 230,000 to 490,000 early deaths making PM exposure between the first to third highest risk factor for mortality in the U.S. in 2020.

Will you commit to reviewing these analyses with the CDC and other health agencies to get support for these claims?

### **New Source Performance Standards for Power Plants**

24. In a memo to the broader Science Advisory Board on Nov. 12, the SAB Work Group charged with reviewing EPA's major rulemaking actions recommended a review of science underpinning the NSPS proposal. Specifically, the Work Group highlighted concerns that the underlying science lacked adequate peer review. Subsequently, at a SAB board meeting Dec. 4-5, EPA representatives argued against the Work Group's recommendations. In light of these developments, we respectfully request that you make available to the Committee the following information:

- All written communications between those EPA employees the SAB or the SAB Work Group concerning peer review of any studies that the proposed standards relied on.
  - A record of all peer review of any studies that the proposed standards relied on.
  - EPA's intentions regarding the need for further peer review of any such studies and whether EPA intends to withdraw its reliance on any of those studies in promulgating the performance standards.
  - All records of any SAB or the SAB Work Group review of or input into the proposed standards. If EPA did not solicit this input, please explain why not.
  - EPA's intentions regarding future SAB or SAB Work Group input into the proposed standards. If EPA does not intend to solicit this input, please explain why not.
  - All records of any SAB or SAB Work Group input into EPA's development of regulations under Section 111(d) of the Clean Air Act pertaining to existing fossil-fuel-fired electric generating units or SAB or SAB Work Group consideration of such regulations.
  - EPA's intentions regarding future SAB or SAB Work Group input into these existing unit regulations. If EPA does not intend to solicit this input, please explain why not.
25. Since EPA claims no one is expected to build a new coal plant in the near future, could EPA wait 8 years until the next review of NSPS to allow greater time for determination as to whether CCS is adequately demonstrated for new coal plants? If so, why does EPA see the need to determine whether CCS is adequately demonstrated before this time, seeing as no NGU's will be built before then?

### **Economic Modeling Commitment**

26. Since 1977, section 321(a) of the Clean Air Act (CAA) has required "the Administrator to conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of [the Clean Air Act] and applicable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement." The §321 requirement is different than the requirement from Executive Order 12866 that EPA consider in a Regulatory Impact Analysis (RIA) what impact a single proposed rule will likely have on jobs. For §321, EPA has to consider the impact that existing CAA requirements – taken as a whole – have had on job losses and shifts in employment throughout our economy. RIAs, by contrast, only consider the potential future employment impact that a single proposed rule will have. Therefore, EPA's

preparation of RIAs for new rules does not satisfy §321(a). EPA has never conducted a section 321(a) study to consider the impact of CAA programs on jobs and shifts in employment.

- Why has EPA not conducted a study to consider the impact of CAA programs on job shifts and in employment?
  - Will EPA commit to conducting such studies in the future?
27. EPA committed to convene an independent panel of economic experts experienced with “whole-economy” modeling to evaluate whether EPA’s current economic modeling adequately measures the employment impacts of rules.
- Why has the EPA not convened such an independent panel?
  - Does EPA have plans of convening this panel in the future? If so, when?

#### **Sue and Settle**

28. During Senate confirmation as EPA Administrator on July 9, 2013, you agreed to undertake four action items: (1) improve Freedom of Information Act (FOIA) training for EPA employees, (2) publicly release the scientific information EPA used to set nationwide air quality standards, (3) study whether EPA needs to conduct more thorough economic analyses of the employment impacts of its regulations, and (4) to publish on two websites the Notices of Intent to Sue (NOIs) and Petitions for Rulemaking (PFRs) received by the agency.
- What steps have you taken since your confirmation to improve the transparency of this process and allow affected parties, including states and industry, to participate in the process, including settlement negotiations, to ensure that all interests are represented?
  - As EPA Administrator, what steps are you taking to ensure that the agency does not agree to deadlines through settlements that do not provide sufficient time for EPA to meet its obligations under the Administrative Procedure Act, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, OMB Circular A-4, and other requirements that apply to EPA?
29. In a denial earlier this year of several environmental groups’ petition for a rulemaking under the Clean Air Act, Acting Administrator Robert Perciasepe stated that, “[e]ven under the best circumstances, the EPA cannot undertake simultaneously all actions related to clearly determined priorities as well as those requested by the public, and so the agency must afford precedence to certain actions while deferring others.... The EPA must prioritize its undertakings to efficiently use its remaining resources.”

In your view, do new commitments that EPA agrees to in "sue and settle" agreements with environmental groups, including timetables for rulemakings, have an impact on EPA's priorities as to the rulemakings that it undertakes? Have they had an impact on EPA's budgetary resources?

### **Tier 3**

30. Did EPA proceed with the Tier 3 rule to satisfy an agreement during the CAFE negotiations?

### **Integrated Risk Information System**

31. IRIS assessments released at the evidence table stage come without context and the public lacks knowledge regarding EPA thoughts regarding endpoints of concern, modeling and critical literature. As such, within just 60 days, the public must review hundreds of studies to provide comments to EPA on their quality, acceptability and suggested use. This may be placing a heavy burden on stakeholders who wish to engage the EPA.

Do you believe changes could be made to this approach that might benefit stakeholders? If so, what changes do you think stakeholders might benefit from most?

32. EPA has released a complete draft Benzo(a)pyrene assessment for 60 day peer review. Upon request, EPA did extend the comment period for another 30 days. However, the document and supporting information is over 500 pages and the public did not benefit from any review of evidence tables. There were no earlier discussions with EPA about critical studies.

Why didn't EPA share some of the preliminary information with the public before releasing a completed draft assessment?

33. Will you ensure that as part of the improvements in the IRIS program, the Agency will move away from outdated default assumptions and instead always start with an evaluation of the data and use modern knowledge of mode of action—how chemicals cause toxicity—instead of defaults?
34. To further improve the IRIS Program, can you commit to revising the way hazard values are presented to the public to ensure that critical science policy assumptions are transparently presented and not comingled with scientific assumptions?
35. What are natural environmental chemical levels? What are background, man-made chemical levels?
- How do you consider these levels in IRIS determinations?

- How do IRIS hazard values accommodate levels associated with existing natural exposures that are not known to be associated with any adverse effects at these low exposure levels?
36. Can you commit to ensuring that a 3<sup>rd</sup> party, independent of the IRIS Program, is tasked with ensuring that EPA staff have sufficiently considered and responded to peer reviewer and public input before assessments and other documents are finalized?

**Cross- cutting Risk Assessment Concerns:**

37. Some scientists have suggested using a weight of evidence framework that incorporates relevant and reliable data along with knowledge of hypothesized modes of action, so that there is a clear and objective presentation of the extent to which existing data and knowledge do, or do not, support each hypothesis, including the default.

Do you support such an approach? If so, can you provide us with a timeline for such an approach might be adopted within OPPT and IRIS?

38. One of the biggest challenges for risk assessment is the insistence by some international regulators to use hazard as a surrogate for risk in regulatory decision-making.

When EPA personnel participate in international forums where these issues are being discussed (e.g., OECD, APEC, SAICM, etc.) will you encourage them to advocate that risk be used as the basis for human health and environmental policy development?

39. EPA's IRIS program completes no more than 10 assessments per year. Since 1999 the Canadian government has evaluated about 23,000 chemicals as part of its chemical management plan. By 2006, all 23,000 chemicals had been evaluated and about 4,000 chemicals were identified as requiring further review. Since then Canada has been systematically reviewing these 4,000 substances and has thus far identified a list of Priority Substances considered "toxic" under the criteria laid out in legislation for which management plans are to be created.

- Does EPA have the capacity to review the same number of chemicals in the same time period as the Canadian government?
- What did the Canadian government find that disagrees with EPA findings?
- What is EPA doing to streamline the chemical assessment process?
- Would you agree that the IRIS program can do better, and that some fundamental changes are necessary?
- What changes do you believe should be made to the IRIS program?



- Do you support broad discussions with stakeholders to re-think the IRIS framework and approach?

#### **Questions Regarding ORD Nominee Thomas Burke:**

40. Thomas Burke suggested in an NAS report he chaired that information on nonchemical stressors should be incorporated into assessments and EPA should further research dollars into evaluating the interactions between chemical and nonchemical stressors.

- Do you believe that EPA has the staff, with requisite qualifications, and financial capacity to also take on evaluations of nonchemical stressors?
- Should EPA convince Congress, NAS, and all other stakeholders that they can appropriately evaluate chemical stressors before broadening their scope to include evaluation of chemical stressors?

#### **Grant Funding – Conflict of Interests**

41. In response to questions you stated that you have a process in place to review the eligibility of EPA grant recipients serving on peer review panels. When was this review process put into place?

42. Did EPA review in detail the grants that were obtained by current CASAC panel members and consultants to determine if there is was a potential conflict?

- If so, who within EPA has conducted this review?
  - What does the grant review involve?
  - Are grants to the potential member's institution also reviewed?
  - Can EPA share the results of this grant review with the Committee?
- If EPA has not done the detailed review of the individual grants of CASAC panel members and consultants, why not? When will EPA conduct this review?
- Under what specific circumstances would EPA conclude that a grant recipient should not serve on a peer review panel?

43. When EPA appointed Dr. Jonathan Samet to be chair of the CASAC panel reviewing the PM2.5 NAAQS, did EPA review EPA grants to Dr. Samet and his affiliated research institutions for a potential conflict?

- How far back did the evaluation go?
  - What was the total amount of EPA funding provided to Dr. Samet and his research institutions in the five years leading up to his appointment?
  - If EPA grants were provided, what areas of research did the grant funding cover?
  - Did any of the grants address PM2.5 or ozone NAAQS related science?
44. EPA's Peer Review Handbook states that experts that have made public pronouncements on an issue may lack impartiality and should be avoided; and that individuals who have "taken sides" should be avoided. According to the recently released IG Report on EPA's management of CASAC, in 2008, EPA selected Jonathan Samet as Chair of CASAC to review the PM2.5 standard even though he had published an article in 2006 opposing EPA's current PM standard. The IG Report stated that Dr. Samet failed to disclose the public statement in the disclosure form that specifically asked if he "*made any public statements, written or oral, on the issue that would indicate to an observer that you have taken a position on the issue under consideration.*" According to the IG Report, CASAC members are also required to update this form annually and to participate in an ethics training course.
- Did the SAB staff review Dr. Samet's publications to see if a public statement had been made?
  - Has anyone at EPA asked Dr. Samet why he omitted this important information despite a direction question on his form?
  - Did Dr. Samet submit a new financial disclosure statement annually while Chair? If so, did he continually omit disclosure of his public statements on all his forms?
45. Does EPA normally review publications of CASAC members and consultants to determine if public statements have been made?

### **Data Transparency**

46. In answering member questions, you stated that in response to the Shelby Amendment on data access, you have assured yourself that you have access to the underlying research data.

Does this include the confidential cohort data?

47. According to OMB grant policies (Circular A-110) that were in place before and after the Shelby Amendment, federal agencies have the right to "obtain, reproduce, publish or otherwise use the data first produced under an award," and authorize "others to receive, reproduce, publish, or otherwise use such data for Federal purposes". This broad authority (\_\_\_36(c)(1)&(2)) is unrelated to Freedom of Information Requests.

Given that the American Cancer Society and Harvard Six City studies were funded by EPA, does the federal government have the ability to obtain the data that resulted from those grants under \_\_\_36(c)(1)&(2) of the A-110 Circular?

48. Can you provide us with a list of all the times EPA has obtained research data to conduct its own analysis?

49. Are there studies on PM2.5 and ozone studies that rely on publically available data sets? If so, please list those studies.

50. Will EPA commit to not rely on studies for setting standards that are based on underlying data sets and methodologies that neither EPA nor the public can access and review?

#### **Questions Relating to the Use of Old Cohort Data**

51. The individual cohort data from the American Cancer Society and Harvard University are over 30 years old. Because the data were collected over 30 years ago, the smoking rates of the individuals in the studies have stayed the same despite a dramatic fall in smoking nationally. Similarly, the assumptions about participants' use of heart medicine and cholesterol lowering drugs have not changed over these 30 years, despite the dramatic increases in their usage nationally.

- Does EPA believe that the outdated nature of the individual cohort data used in studies that rely on the ACS and Harvard Six City cohort data create additional uncertainties and weaknesses that could be corrected if new cohort data were used?
- Does EPA believe that the small but statistically significant decrease in deaths attributed to reduced PM2.5 exposures in these studies are, at least in part, due to reductions in smoking or increased use of medications that the studies are not addressing? If so, how can the EPA know what percent of the decrease in deaths attributed to reduced PM2.5 exposures are actually due to other factors?

#### **Environmental Research, Development and Demonstration Authorization Act**

52. The Environmental Research, Development and Demonstration Authorization Act of 1978, 42 USC § 4365 (ERDDAA) established the Science Advisory Board (SAB).  
a. Please explain in detail how you interpret the provisions ERDDAA.

- b. Explain EPA's interpretation of ERDDAA's requirement that the "Administrator, at the time any proposed criteria document, standard, limitation, or regulation under the... [CWA]... is provided to any other Federal agency for formal review and comment, shall make available to the Board such proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based." *Id.*
- c. Explain in detail the role and powers ERDDAA gives specific Congressional Committees. Do these powers include the ability to pose charge questions to the SAB? Why or why not? Do these powers include initiating the formation of new SAB panels to provide advice to Congress? Why or why not. Please cite any relevant statutory support for these positions and explanations.
- d. Does the SAB have the independent power to initiate reviews? Why or why not?
- e. What specifically is required to initiate reviews. How were these requirements determined?

**QUESTIONS FOR THE RECORD**  
**The Honorable Paul Broun (R-GA)**  
**U.S. House Committee on Science, Space, and Technology**

*Strengthening Transparency and Accountability within the Environmental Protection Agency*

Thursday November 14, 2013

**IRIS Questions**

1. You testified on November 14 that "The Agency's ability to pursue its mission to protect human health and the environment depends upon the integrity of the science upon which it relies. I firmly believe that environmental policies, decisions, guidance, and regulations that impact the lives of all Americans must be grounded, at a most fundamental level, in sound, high quality, transparent, science." Additionally, at the September 17, 2012 opening public meeting of the National Research Council (NRC) IRIS Review panel, EPA NCEA Director Dr. Ken Olden stated in his presentation, that "openness and transparency will be the hallmark [of IRIS assessments] going forward." At the same NRC meeting, EPA Acting IRIS Director Vince Coglianò informed the panel that "new [EPA IRIS] initiatives will increase transparency and promote involvement of the scientific community." Finally, the NRC Formaldehyde Report (2011), the committee noted in its recommendations to EPA for improving the IRIS process overall, "In the judgment of the present and past [NRC] committees, consideration needs to be given to how each step of the [IRIS] process could be improved and gains made in transparency and efficiency." (NRC Formaldehyde Report (2011), p. 164).

In order to understand the scientific underpinnings of many EPA documents, the public has been forced to resort to using FOIA, or other approaches, to try to obtain critical information and data that the EPA has relied upon. As these tools are time consuming and create legal hurdles, the information has not been available to the public in a timely manner to inform review and public comment.

- As part of a commitment to transparency and openness, do you agree that the data and information which underlies the key scientific studies the agency relies upon in important scientific reviews, assessments, and rulemakings (e.g., NAAQS Integrated Science Assessments, IRIS Toxicological Review), should be available to the public?
  - Can you commit to making this information available in public dockets?
2. Industry and federal research efforts have invested millions to better understand how chemicals interact with biological systems at human exposure levels in order to ensure development of human health risk assessment prediction models that are as accurate and science-based as possible. However, EPA has a long track record of dismissing these types of scientific biologically-based models and asserting that such approaches cannot prove the defaults are not warranted. Demanding that science proves a negative is an

anti-scientific policy and indicates a deep seated prejudice against use of mode of action knowledge to replace defaults.

- Why shouldn't EPA use the most up to date knowledge on mode of action and dose response at environmentally relevant exposures in lieu of outdated default approaches for hazard identification and dose response throughout the Agency, including in the IRIS Program?
3. As EPA prepared to conduct a non-cancer toxicity assessment of Libby Amphibole Asbestos, it arranged by contract for development of additional data that EPA described as "for development of the most accurate RfC for the Libby site." These new data included advanced radiographic imaging and pulmonary function studies of the population from which the RfC would be derived. The new data were collected by the University of Cincinnati as planned, but after several years remain unpublished and undisclosed by the federal government. EPA has neither revealed its assessment of the data nor explained why it chose to prepare its draft toxicity assessment without citation to or disclosure of underlying data that was sought by EPA to ensure the accuracy of the RfC.
- Please explain how EPA reconciles not disclosing the above data with its commitment to transparency and the NRC recommendation as noted above as well as the disclosure directives of FOIA and OMB Circular No. A-130 (Revised) which express the policy that the open and efficient exchange of scientific and technical government information supports the operation of democracy and excellence in scientific research.
  - If EPA asserts that it does not possess or have access to any portion of the data, for instance because the funding mechanism changed and someone else paid for it, please explain:
    - a. In the interests of transparency and sound science, why EPA did not affirmatively obtain for its own use the data during RfC development, especially since EPA had described the data as needed "for development of the most accurate RfC."
    - b. Which governmental agencies provided funding for the development of the data?
  - We understand that EPA received a Freedom of Information Act Request (FOIA) for the above data, and subsequently withheld a portion of the data based upon the deliberative process privilege. EPA explained by letter of November 1, 2013 that it was withholding the data because:

*The withheld documents, and portions of documents, are protected by the deliberative process privilege because they reflect the internal discussions, advice, analysis, and recommendations that*

*were considered in developing the [IRIS] Assessment for Libby Amphibole Asbestos. The records were created prior to the finalization of this IRIS Assessment. Furthermore, withheld records were not circulated outside the Agency. Release of the withheld material would prematurely disclose proposed policies before they are finally adopted and cause public confusion by disclosing reasons and rationales that were not in fact ultimately the grounds for EPA's final assessment.*

We further understand that the deliberative process privilege does not ordinarily cover scientific information and data, and "government researchers must be willing to expose the underlying data to public scrutiny." *Chicago Tribune Co. v. United States Dep't of Health and Human Servs.*, 1997 U.S. Dist. 2308 at \*52 (N.D. Ill. Feb. 26, 1997). In light of this, please explain how the deliberative process privilege protects against disclosure of data, and whether the data should be produced to the public under FOIA.

4. EPA is identifying the non-cancer adverse effect for the draft toxicological assessment of Libby Amphibole Asbestos as pleural plaques, asserting there is an association with certain functional impairment of the lung. It has come to our attention that the question of whether pleural plaques cause any clinically significant impairment is highly disputed and controversial. In light of this information:
  - Is EPA considering discarding the assertion that pleural plaques cause lung decrements or any other functionally significant impairment because this initially proposed basis for selecting pleural plaques as the adverse effect lacks the needed scientific support?
  - a. If so, in the interest of transparency, please explain EPA's current position as to which adverse effect it is using for its non-cancer toxicological assessment, the basis for selecting that adverse effect, and whether the Agency will provide the opportunity for public comment on any change in its position.
5. Do you agree that all studies should be independently judged based on their quality, strength, and relevance regardless of the author affiliation or funding source?
6. Do you agree that chemicals associated with the human body's natural processes should be addressed specifically and separately in the development of an EPA hazard value or risk assessment?
7. An analysis presented at the Society of Toxicology meeting showed that 67% of the Hazardous Air Pollutants (HAPs) have no IRIS value.
  - a. Do you believe that HAPs should be priorities for assessment within the IRIS Program?
  - b. What are the criteria for selecting chemicals for assessment within the IRIS Program?

- c. Can you commit to developing a clearly articulated prioritization process for high priority IRIS assessments that benefits from, and is responsive to, engagement from all stakeholders?

### **Utility MACT and Other Air Quality Issues**

8. There are many groups that analyze the impacts of EPA regulations. In particular, most of these groups analyze job losses. These include, for example, job losses due to higher energy prices. How does EPA determine job losses that are caused by a proposed rule or a final rule? For example, do you use a model to determine job losses? When you analyze the job impacts of a rule that affects power plants -- for example, the Utility MACT rule that will cost \$10 billion per year -- does EPA analyze job losses in industries that have to pay higher energy prices?
9. In a 2012 letter, you stated that "the best scientific evidence... is that there is no threshold level of fine particle pollution below which health risk reductions are not achieved by reduced exposure." Do you believe that any of the criteria air pollutants under the Clean Air Act (ozone, lead, sulfur dioxide, nitrogen oxides, carbon monoxide, coarse particulate matter) have a threshold below which they are not harmful to human health (or may be beneficial)?
10. Last month, the World Health Organization classified outdoor air pollution as carcinogenic to humans. Do you think ambient air in America causes cancer?
11. According to the Office of Management and Budget, benefits from reducing particulate matter represent a majority of all benefits for all regulations across the entire federal government. Do you agree?
12. Your predecessor, Lisa Jackson, previously testified that "If we could reduce particulate matter to healthy levels, it would have the same impact as finding a cure for cancer." Cancer kills roughly 600,000 people in this country each year. Do you agree with Administrator Jackson's statement?
13. Will your Agency propose a new National Ambient Air Quality Standard for ozone before the end of 2014?

### **EPA's Second Peer Review on the Bristol Bay Assessment**

14. In the development of the Agency's Bristol Bay Assessment, the Agency without soliciting any public input, asked the original twelve peer reviewers to give their opinions on how well the Agency responded to the comments that these peer reviewers made on the first draft of the Bristol Bay Assessment. Will you release the peer reviewers' comments now, before the final Bristol Bay Assessment is released? This will not in any



way prejudice the Assessment, and will be in keeping with your commitment to both transparency and sound science.

### **Climate Regulations**

15. When EPA released its regulations on new power plants in September, they were criticized because they would have a negligible impact on climate change. However, you have repeatedly emphasized that if we get enough countries on board we can make a difference, and you have said that a key goal of EPA's rules is to help leverage some kind of international agreement.

With that in mind, will you assure us that EPA will not take unilateral action on climate—which EPA itself acknowledges is not sufficient to make a measurable impact—but rather only proceed with rules if other major emitting countries like China agree to similar binding regulations? If not, why not?

16. In 2009, President Obama committed to the U.S. to reducing greenhouse gas emissions 17 percent below 2005 levels by 2020. If EPA's power plant regulations are implemented, will the U.S. achieve that goal?

In accordance with the UN Climate Change Conference in Warsaw that concluded on November 23 with an agreement for additional cuts beyond 2020, the U.S. is expected to support additional reductions beyond the President's 2020 goal. What will EPA have to regulate in order to meet those commitments? In other words, does EPA intend to regulate natural gas-fired powered plants in order to meet these new commitments?

**QUESTIONS FOR THE RECORD**  
**The Honorable Larry Bucshon (R-IN)**  
**U.S. House Committee on Science, Space, and Technology**

*Strengthening Transparency and Accountability within the Environmental Protection Agency*

Thursday November 14, 2013

**Definition of Fill Material**

1. The current definition of fill material, finalized in May, 2002, unified the Corps and EPA's prior conflicting definitions to solidify decades of regulatory practice. However, both EPA and the Corps have stated that they are now considering revising the definition of fill material. Ken Kopocis at his nomination hearing pointed to the 2009 Supreme Court decision in *Coeur Alaska v. Southeast Alaska Conservation Council* as justification, stating that there is "remaining ambiguity regarding circumstances where discharges of fill material (e.g., mine tailings) may also be covered by an Effluent Limitation Guideline." Do you believe that such ambiguity exists, and will EPA be seeking to address that issue?

**Water Quality Criteria – Conductivity**

2. While EPA's conductivity "benchmark" that it had applied to Appalachian streams were set aside by the U.S. District Court for the District of Columbia in the case of *NMA v. Jackson*, EPA recently published several papers supporting its conductivity actions, and announced that it is developing a water quality criteria.
  - a. Will EPA's new criteria be a regional criteria, or applicable nationwide?
  - b. As is required by law, will EPA be applying its conductivity criteria to all CWA permits, regardless of industry?
  - c. In the past, EPA has not addressed scientific critiques that have produced evidence that conductivity is not a good indicator of benthic/aquatic health. Going forward, what plans does EPA have to take this growing number of studies into account?

**Selenium Water Quality Criteria**

3. EPA is currently involved in a scientific assessment of Selenium that will be used to propose a new national Selenium water quality criterion. Yet, EPA constantly pushes back a potential release date for its proposal, which is causing uncertainty for operations nationwide.
  - a. What is EPA's proposed release for a selenium water quality criteria?
  - b. What is EPA's strategy for incorporating relevant scientific critiques and comments EPA receives into its final Selenium criteria?
  - c. How is EPA taking the site-specific nature of Selenium issues into account when developing the national standard?

### **Court Cases – *National Mining Association v. Jackson***

4. The U.S. District Court for the District of Columbia in the case of *NMA v. Jackson* recently struck down several EPA actions – specifically, EPA’s Enhanced Coordination Process (ECP) and Multi-Criteria Integrated Resource Assessment (MCIR) for Appalachia surface coal mining, as well as EPA’s guidance document, “Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order” – as violating the CWA and Administrative Procedure Act, as well as, in the case of the guidance document, the Surface Mining Control and Reclamation Act. In your confirmation hearing, you stated that the Agency has directed its field offices not to use the guidance documents affected by the court decision. However, very few mining permits have been issued since the decision.

How does that outcome comport with the District Court’s decision, and what additional steps do you think are needed to adhere to the District Court’s decision?

### **Court Cases – *Mingo Logan Coal Co. v. EPA***

5. In March, 2012, the U.S. District Court for the District of Columbia struck down EPA’s retroactive revocation of a mining-related CWA Sec. 404 permit, holding unequivocally that EPA has no authority to retroactively veto CWA Sec. 404 permits issued by the U.S. Army Corps of Engineers. However, EPA appealed that decision and in April of 2013, the U.S. Court of Appeals for the District of Columbia reversed the decision of the District Court.
  - a. What do you think the practical effect on industry would be of having Sec. 404 permits be subject to EPA’s veto even years after permit issuance and even if the permittee is in full compliance with the terms of the permit?
  - b. During deliberations on the Clean Water Act in Congress, Senator Muskie noted that there are three essential elements to the Clean Water Act -- "uniformity, finality, and enforceability". How do the assertions made by EPA regarding the scope of its authority under Sec. 404 comport with the notion of permit finality? How have you, pursuant to your testimony at your confirmation hearing, worked to implement the CWA to provide uniformity, finality and enforceability?

### **Bristol Bay Draft Watershed Assessment**

6. In response to petitions from environmental organizations to initiate a 404(c) veto process for a potential mine site in Bristol Bay before a permit application was submitted, EPA – pointing to its authority under CWA Sec. 104 – initiated a draft watershed assessment that involved the crafting of a hypothetical mining scenario in Bristol Bay.
  - a. EPA has stated that the assessment will not have any legal consequences, but also that it is intended to provide a scientific and technical foundation for decision-making. How exactly does EPA intend to utilize this study under your leadership?
  - b. EPA has full authority under the well-established Sec. 404 process to review any future permit application submitted to make a determination as to whether or not there will be any of the unacceptable adverse effects listed in CWA Sec. 404(c) at the disposal sites being considered by the U.S. Army Corps of Engineers, including unacceptable impacts to fishery areas and wildlife. Why, then, is EPA using its limited resources to conduct a

watershed assessment on a hypothetical mining scenario that even EPA's scientific review panel found did not accurately reflect the conditions of a real mine, rather than allow the companies that have invested millions of dollars to submit their proposal which EPA would then review?

- c. What impact do you think EPA's actions with respect to Bristol Bay will have on investment in U.S. property and natural resource development?
- d. Has EPA considered the positive environmental justice impacts high-paying jobs and tax revenue will have on the region?

**QUESTIONS FOR THE RECORD**  
**The Honorable Steve Stockman (R-TX)**  
**U.S. House Committee on Science, Space, and Technology**

*Strengthening Transparency and Accountability within the Environmental Protection Agency*

Thursday November 14, 2013

**Interagency Taskforce on Development of Unconventional Natural Gas Resource**

**Background Statement on Task Force:**

- On April 13, 2013, the President signed an executive order (EO) forming an interagency Task Force to support the safe and responsible development of unconventional natural gas resources
- In the Policy section of that EO the president states that "it is vital that we take full advantage of our natural gas resources" while doing it safely.
- The EO outlines the function of the Task Force as coordinate agency policy activities, sharing scientific and economic information, long-term research and infrastructure planning and consultation among agencies
- EPA is a member of that task force at the Deputy level according to the EO.

**Questions:**

1. Mrs. McCarthy, who is EPA's representative to this Task Force and how often does it meet?
2. Have you personally been briefed on the Task Force activities?
3. Can you provide an update to this Committee today on EPA's activities and focus areas as a member of this Task Force?
4. There are a number of Executive Branch departments and agencies engaged in some fashion in unconventional resource development. Can you provide your opinion on the level of coordination on policy activities, sharing of information and, in particular, and your thoughts on long-term research in the area of infrastructure planning?
5. Last week, Interior Secretary Jewell said that there is a lot of misinformation about fracking and that quote "'Fracking has been done safely for many, many years,"
  - a. Do you agree with Secretary Jewell that fracking has been done safely for many years?
  - b. What parts of the fracking process do you feel are being done safely?
  - c. Are there any parts of the fracking process that you feel are not safe?

## **Credibility and Ability of EPA Science**

### **Background Statement on EPA Science**

- In 2009 legislation, Congress directed EPA to conduct a study on hydraulic fracturing and groundwater.
- Rather than following the statute – how HF affects groundwater – EPA has outlined a sprawling study plan that goes well beyond groundwater issues.
- EPA initially did not recognize this as a “highly influential” study subject to OMB’s Peer Review Bulletin, has not been able to garner an industry partner in conducting perhaps the most important aspect of its study plan – the “before and after” prospective study, and also had an EPA science debacle when its scientists independently pursued research in Pavillion, WY.
- Today, at the end of 2013, EPA still has not issued the study and we are told not to expect it until 2016.

### **Questions:**

1. Can you please describe for us what happened with the study of effects of hydraulic fracturing on water? Why it got so far off course, and what EPA is doing to get this effort back on track? What do you think this says about the state of EPA’s science process and its ability to be timely and relevant?
  - a. Can you please explain the decision to conduct a sprawling study rather than investigate the narrow question Congress posed?
  - b. Can you please explain the initial decision not to designate this study as a “highly influential” document subject to OMB’s Peer Review process?
  - c. I am concerned that EPA has not been able to get any industry partners for the before-and-after prospective study. Can you please explain the apparent impasse between EPA and industry stakeholders on this issue? Can you please describe the issue around protocols around the study that we hear is one source of friction between EPA and industry?
  - d. I would note that the University of Texas, EDF, and 9 companies partnered for a landmark study to look at emissions from oil and gas operations. That study took about a year. This tells me that industry partnerships are possible and that your agency should be able to find common ground with industry to conduct the study.

## **EPA's Role in Assuring the Public that Fracking is Safe**

### **Background Statement on EPA's Role in Public Confidence:**

- In that same interview last week, Secretary Jewell called on industry to educate the public on the safety of hydrofracking
- I agree, and it would seem to me that industry is trying to do just that:
  - Industry is participating with NGOs and academics to confirm the low emission rates of methane
  - Industry is implementing more stringent standards for drill sites, well bores and air emissions
  - Industry is working with states to implement more stringent regulatory requirements to further assure the safety of their operations
  - Industry has stepped up to the plate to try and educate the public on the safety of their operations
- However, EPA has not been so helpful:
  - You publish ground water contamination studies that are then discredited and withdrawn
  - You don't rebut flawed air emission studies that report methane emissions an order of magnitude higher than EPA's estimates
  - Last week in testimony before the Senate EPW, your Director of Atmospheric Programs (Ms. Sarah Durham) couldn't even make a positive statement about the UT/EDF air emissions study that basically confirmed EPA's estimate of emission from unconventional gas development operations

### **Questions:**

1. Mrs. McCarthy, what role do you see EPA playing in assuring the public that unconventional gas development, development that President Obama supports, is safe?
2. Do you agree that EPA mis-steps around groundwater contamination can lead to a loss of public confidence?
3. Do you agree that failure to acknowledge reports confirming your own emission estimates and failure to discredit obviously flawed reports can lead to a loss of public confidence?
4. Can you see how EPA's silence on the wide range of hydrofracking issues being debated can lead to a loss of public confidence?
5. Secretary Jewell, less than 6 months into the job, is trying to instill some confidence with the public on hydrofracking – isn't it time EPA do so as well?

## **Clean Air Science Advisory Committee Transparency and Accountability Issues**

### **Background**

- On September 11, the EPA Inspector General released a final report titled "*EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees*".
- The report raised a number of alarming issues regarding the operation of EPA's Clean Air Science Advisory Committee (CASAC) and leaves many unanswered questions.
- CASAC is the advisory committee that during the past five years has recommended dramatic reductions in standards for nitrous oxides, sulfur oxides, particulate matter and ozone.
- The current ozone standard is under review again by CASAC and they are expected to make yet another recommendation to dramatically lower the ozone standard.

### **CASAC Financial Conflicts of Interest and Independence**

#### **Background on Financial Conflicts of Interest and Independence:**

- CASAC members and contract advisors, or research institutions they are affiliated with, receive substantial grants from EPA for air quality research.
- In one case, Dr. Jonathan Samet, or his affiliated research institutions received almost \$30 million dollars in EPA grants for research; Dr. Samet was the chair of the PM CASAC and currently serves on the ozone CASAC.
- In fact, several serving CASAC members have received over \$1 million dollars from EPA for research.
- The IG Report confirms that a CASAC member's research grant is a potential area of concern if the Committee plans to address work performed under the research grant.
- Despite the millions in grant funding to CASAC members, it is unclear from the Report whether anyone actually investigated to see if those grants compromised their independence.
- The IG also found 9 instances where steps taken to mitigate independence or partiality matters were either not adequately documented or needed additional steps to sufficiently address potential independence or partiality concerns.
  - This included two instances where CASAC members contributed to studies or sections of CASAC reports under review by the CASAC panel creating a situation where they were opining on their own work

#### **Questions:**

1. Mrs. McCarthy, it's hard to know where to start. EPA is selecting advisors that are receiving millions of dollars from EPA for research. According to the IG Report, some of the selected advisors were also found to be reviewing or opining on elements of their own work; and that the Agency is not following existing agency procedures regarding conflicts of interest, or taking steps to mitigate issues when they are identified. What



steps is EPA taking in light of the IG Report to assure that the current CASAC ozone panel is impartial?

2. Please explain to me why the CASAC recommendation last year to lower the PM standard, a recommendation the EPA took, was not biased or not independent given these serious findings by the IG?
3. Will you commit here today not to select CASAC members and consultants that receive EPA funding for NAAQS related air quality research? There are certainly plenty of qualified individuals out there not on EPA's payroll.

### **CASAC Lack of Impartiality**

#### **Background:**

- Federal ethics regulations require CASAC members to avoid appearances of a lack of impartiality.
- EPA's Peer Review Handbook states that experts that have made public pronouncements on an issue may lack impartiality and should be avoided; and that individuals who have "taken sides" should be avoided.
- In 2008, EPA selected Jonathan Samet as Chair of CASAC even though he had published an article in 2006 opposing EPA's current PM standard.
- As Chair of CASAC, Dr. Samet presided over the review of the PM standard and made recommendations to lower the PM standard.
- Dr. Samet failed to disclose the public statement in the disclosure form that specifically asked if he "*made any public statements, written or oral, on the issue that would indicate to an observer that you have taken a position on the issue under consideration.*"
- CASAC members are also required to update this form annually and to participate in an ethics training course.

#### **Questions:**

1. Has anyone at EPA asked Dr. Samet why he omitted this important information despite a direction question on his form?
2. Did Dr. Samet submit a new financial disclosure statement annually while Chair? If so, did he continually omit disclosure of his public statements on all his forms?
3. Did Dr. Samet participate in all the required ethics training courses?
4. Why did the SAB staff not check his publication list to see if a public statement had been made?
5. Why aren't the financial disclosure forms (in whole or part) made public to allow the public to assist in reporting financial or potential impartiality conflicts?
6. If EPA had known, would the SAB staff have avoided Dr. Samet's appointment as Chair of CASAC?
7. Should EPA have a clearer policy of not appointing a person to a scientific advisory committee like CASAC if conclusive information has been provided showing a public statement has been made that suggests a clear bias (or removing them, if the evidence emerges after they have been appointed)?

8. Given that the Chair of CASAC was clearly biased in his opinion prior to serving as Chair of the PM CASAC panel, did his participation undermined the ability of CASAC to provide independent advice during the 2012 PM review? Does that compromise the scientific validity of the resulting NAAQS?

**QUESTIONS FOR THE RECORD**  
**The Honorable Dan Lipinski (D-IL)**  
**U.S. House Committee on Science, Space, and Technology**

*Strengthening Transparency and Accountability within the Environmental Protection Agency*

Thursday November 14, 2013

1. According to the EPA Inspector General, EPA violated Section 1605 of the American Recovery and Reinvestment Act, which plainly requires all public works projects funded by ARRA to use iron, steel, and manufactured goods that are produced in the United States. The IG found that submersible pumps and centrifugal blowers for wastewater treatment plants in Illinois were purchased from foreign companies that control no manufacturing facilities in the U.S. In addition, EPA has claimed that payments to American lawyers and marketing firms made these goods Buy American compliant. This incorrect interpretation of the law was perhaps the most disconcerting part of this incident because it could lead to future similar violations of Buy American laws. Can you tell me what steps the EPA has taken since this incident, and will take in the future, to prevent similar incidents? How will EPA ensure it doesn't spend taxpayer dollars on foreign goods when that money could be spent on American made items?
  
2. A constituent company in my district, Seeler Industries, has had questions about enforcement of regulations made under the General Duty provision of the Clean Air Act. As you know, under the General Duty provision, companies have a general duty to maintain a safe facility preventing and minimizing the effects of releases of extremely hazardous substances. I completely support the principle behind this provision, but in practice this company has found that regional EPA inspectors have a wide authority to enforce the provision as they see fit. In addition, according to the company, the rules under the general duty provision may run counter to rules promulgated by DHS for chemical safety. What are you doing to make clear to chemical companies what the requirements are for compliance with the general duty provision? What are you doing to clarify jurisdictional issues between EPA and DHS on chemical safety?

**QUESTIONS FOR THE RECORD**  
**The Honorable Mark Takano (D-CA)**  
**U.S. House Committee on Science, Space, and Technology**

*Strengthening Transparency and Accountability within the Environmental Protection Agency*

Thursday November 14, 2013

Thank you for your testimony before the House Committee on Science, Space, and Technology on November 14, 2013. I appreciated learning more about your work at the Environmental Protection Agency, particularly your efforts to protect public health through enforcement of the Clean Air and Clean Water Acts.

On the subject of clean water, I have additional questions pertaining to the proposed regulations that seek to clarify the bodies of water that should be subject to Clean Water Act jurisdiction. The EPA recently issued a draft scientific report on the connectivity of water, which remains under review by the Science Advisory Board. This report will serve as the scientific foundation for the proposed regulation.

As a member who represents a Southern California district, it is important that the members of the SAB who are putting together this report have an understanding of the water issues in the arid West. As you know, the water challenges and issues we face are vastly different from the Eastern and Midwestern parts of the U.S.

- What steps did the Agency take to ensure that the makeup of the SAB is "regionally" balanced and, more specifically, includes members who have a working understanding and knowledge of Western water issues?

Recently, a document surfaced that appears to be the proposed water connectivity regulation that OMB is currently reviewing. If this is the proposed rule that was put forth by EPA and the US Army Corps of Engineers, it would appear that all tributaries will be considered waters of the U.S. subject to regulation under the Clean Water Act. I have heard concerns that the language of the proposed rule could be broadly interpreted to encompass water conveyance and delivery systems.

- I have heard concerns that under the proposed rule it would be possible that the California Aqueduct and other features of California's vast water delivery system would be considered tributaries to be regulated under the Clean Water. Is that your understanding, and how will it affect water delivery for tens of millions of Californians?

Thank you for your attention to my questions. I look forward to your response and continuing to work with you to protect our environment.